

REMARKS

Oath/Declaration

Applicants enclose an executed copy of the revised Declaration listing the correct priority claim, as required by the Examiner.

Pending Rejections

Claims 17, 18, and 22-24 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Schwartz et al. (U.S. Patent No. 5,769,899). As stated in the Office Action, Schwartz et al. discloses a structure comprising a porous bio-absorbable matrix of hyaluronic acid, which is inherently cell-free, with an overlay of chondrocyte cells.

Claims 19-21 stand rejected under 35 U.S.C. § 103(a) in view of Schwartz et al. (U.S. Patent No. 5,769,899). As stated in the Office Action, it would be obvious to a person of skill in the art to use autologous, allogenic, or xenogenic cells.

Responses to Rejections

As to rejection of claims 17, 18, and 22-24 under 35 U.S.C. § 102(b), the system disclosed in Schwartz et al. does not anticipate the present invention.

Specifically, claim 17 of the present application includes a feature that is neither disclosed nor suggested by Schwartz et al., namely

A cartilage repair structure consisting essentially of:

- (a) a cell-free matrix comprising hyaluronic acid; and
- (b) chondrocyte cells adjacent a surface of said matrix (emphasis added).

“The identical invention must be shown in as complete detail as is contained in the . . . claim.” *Id.* (quoting *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989) (emphasis added)).

Schwartz et al. do not disclose or suggest a cartilage repair structure consisting essentially of a hyaluronic acid matrix and chondrocytes adjacent to a surface of the matrix. Rather, the cells discussed in Schwartz are either cultured in the insert or overlaid into the matrix (see col. 7, lines 26-28).

In contrast, the cells of the presently claimed invention are injected under a covering cap or seeded onto a surface of the matrix.

Further, there is no disclosure in Schwartz to indicate that a cell-free matrix comprising hyaluronic acid and chondrocyte cells adjacent said matrix, with no other components, is useful for repairing damaged or destroyed cartilage. In fact, the statements from Schwartz at column 4, lines 37-42 and column 4, lines 59-63, would lead one of skill in the art away from Applicants' invention. Schwartz states that each of the delivery unit and the insert have different functional characteristics, indicating that each component serves a particular purpose in repairing damaged cartilage, and that each component is required for the invention to work.

The Office Action states that the delivery unit in Schwartz does not change the basic and novel characteristics of cartilage repair assembly in Schwartz. Applicants respectfully disagree. As quoted above, each of the delivery unit and the insert serve a functional purpose as part of the cartilage repair assembly, and there is no indication that the cartilage repair assembly would work using either the delivery unit or the insert alone. Further, each of the delivery unit and the insert is required as part of the Schwartz invention.

For the reasons set forth above, Schwartz cannot anticipate the invention of a cartilage repair structure consisting of a cell-free matrix comprising hyaluronic acid and chondrocyte cells adjacent said matrix. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 17, 18 and 22-24 under 35 U.S.C. §102(b).

Regarding the rejection of claims 19-21 under 35 U.S.C. §103 in view of Schwartz et al., Applicants respectfully contend that this rejection is now rendered moot in view of the arguments presented above regarding claim 17, from which claims 19-21 depend. Applicants request reconsideration and withdrawal of this rejection.

Summary

Applicants respectfully submit that the pending claims are in condition for allowance. Applicants request entry of the present amendments and allowance of claims 17-24 on the merits is respectfully requested at this time.

Respectfully submitted,
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June 17, 2005
(Date)

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